1 BILL NO. Z-86-12-21 (AS AMENDED) ZONING MAP ORDINANCE NO. Z- 19-87. 2 3 AN ORDINANCE amending the City of Fort Wayne Zoning Map No. F-2. 4 5 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF 6 FORT WAYNE, INDIANA: 7 SECTION 1. That the area described as follows 8 hereby designated a B-1-A (Limited Business) District under 9 the terms of Chapter 33 of the Code of the City of Fort 10 Wayne, Indiana of 1974: Beginning at the northeast corner of Lot numbered 11 eleven (11) Samuel Edsall's Subdivision in LaGro Reserve in Section eight (8), Township thirty (30) north, Range twelve (12) East, Allen County, Indiana; thence south eighty-nine (89) degrees forty-four (44) 12 13 minutes west, along the north line of said Lot numbered 14 eleven (11), a distance of two hundred ten (210) feet; thence due south parallel to the east line of said Lot 15 numbered eleven (11), a distance of four hundred fourteen and eighty-six hundredths (414.86) feet to an 16 iron pin; thence north eighty-nine (89) degrees forty-four (44) minutes east, parallel to the north line of said Lot numbered eleven (11), a distance of 17 two hundred ten (210) feet to an iron pin; thence due 18 north, along the east line of said Lot numbered eleven (11), Samuel Edsall's Subdivision in LaGro Reserve in Section eight (8), Township thirty (30) north, Range twelve (12) east, a distance of four hundred fourteen 19 and eight-six hundredths (414.86) feet to the place of 20 beginning, containing two (2) acres more or less. 21 and the symbols of the City of Fort Wayne Zoning Map F-2, as 22 established by Section 11 of Chapter 33 of the Code of the 23 City of Fort Wayne, Indiana are hereby changed accordingly. 24 SECTION 2. That this Ordinance shall be in full force 25 and effect from and after its passage and approval by the 26 Mayor. 27 28 COUNCILMEMBER 29 APPROVED AS TO FORM AND LEGALITY: 30 31 BRUCE O. BOXBERGER, CITY ATTORNEY 32

7 8

ZONING MAP ORDINANCE NO. Z-

AN ORDINANCE amending the City of Fort Wayne Zoning Map No. F-2.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the area described as follows is hereby designated a B-3-B (General Business) District under the terms of Chapter 33 of the Code of the City of Fort Wayne, Indiana of 1974:

Beginning at the northeast corner of Lot numbered eleven (11) Samuel Edsall's Subdivision in LaGro Reserve in Section eight (8), Township thirty (30) north, Range twelve (12) East, Allen County, Indiana; thence south eighty-nine (89) degrees forty-four (44) minutes west, along the north line of said Lot numbered eleven (11), a distance of two hundred ten (210) feet; thence due south parallel to the east line of said Lot numbered eleven (11), a distance of four hundred fourteen and eighty-six hundredths (414.86) feet to an iron pin; thence north eighty-nine (89) degrees forty-four (44) minutes east, parallel to the north line of said Lot numbered eleven (11), a distance of two hundred ten (210) feet to an iron pin; thence due north, along the east line of said Lot numbered eleven (11), Samuel Edsall's Subdivision in LaGro Reserve in Section eight (8), Township thirty (30) north, Range twelve (12) east, a distance of four hundred fourteen and eight-six hundredths (414.86) feet to the place of beginning, containing two (2) acres more or less.

and the symbols of the City of Fort Wayne Zoning Map F-2, as established by Section 11 of Chapter 33 of the Code of the City of Fort Wayne, Indiana are hereby changed accordingly.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:

BRUCE O. BOXBERGER, CITY ATTORNEY

Read the first time in full and seconded by , and by title and referred to the Committee Plan Commission for recommendation) and due legal notice, at the Council Chamber	duly adopted, read the second ti
Indiana, on, the	day of
DATE: 12-23-86	SANDRA E. KENNEDY, CITY CLERK
passage. PASSED (LOST) by the follo	on motion by Bello, and duly adopted, placed on it
<u>AYES</u> <u>NAYS</u>	ABSTAINED ABSENT TO-WIT:
TOTAL VOTES 8	
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DATE:	Sandra E. KENNEDY, CITY CLERK
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(SPECIAL) (ZONING MAP) ORDINANCE (RE	
on theday of	
	Mark E. Gia Quinta
SANDRA E. KENNEDY, CITY CLERK	PRESIDING OFFICER
	the City of Fort Wayne, Indiana
on the 12th day of Cer	gush, 1987
at the hour of ///00 o'clo	ck M.,E.S.T.
	SANDRA E. KENNEDY, CITY CLERK
Approved and signed by me this	
19 87, at the hour of 3 300	
	WIN MOSES, JR., MAYOR

Prescribed	har	State	Board	of	Accounts
Prescribed	DV	State	Dogra	OF	11000000

A.E. BOYCE CO., MUNCIE, IND. GENERAL FORM NO. 352

RECEIPT	
CX#3191	Nº 1153
COMMUNITY DEVELOPMENT & PLANNING	
FT. WAYNE, IND., 11-14 1959	50.00
RECEIVED FROM	
List, A	DOLLARS
ON ACCOUNT OF 1905 August - 4705 August	noi
AUTHORIZED SIGNA	TURE

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District Park		DATE FILED	
THIS IS TO BE FILED IN DUPLICATE	NOV 141986	INTENDED US	F
/We JAMES R. MUTTON	FORT WAYNE COMMISS	or Names)	
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ADDRESS OF PROPERTY IS TO BE INCLUDED	):		
705 Illinois Road, Fort Wayne, Indiana			
	ng Staff Use	Only)	
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Fort Wayne, IN 46802 (PHONE: 219/427-1140).

Applicants, Property owners and preparer shall be notified of the Public Heari approximately ten (10) days prior to the meeting.

#### RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on December 23, 1986 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-86-12-21; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on December 15, 1987.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this ordinance be returned to the Common Council with a DO PASS recommendation based on the Commission's following "Findings of Fact":

- (1) the grant will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) the use or value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner;
- (3) the need for the rezoning arises from some condition peculiar to the property involved and the condition is not due to the general conditions of the neighborhood;
- (4) the strict application of the terms of the zoning ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the rezoning is sought; and,
- (5) the grant does not interfere substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law.

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resoluton adopted at the meeting of the Fort Wayne City Plan Commission held 22 December 1986.

Certified and signed this 17th day of July 1987.

Robert Hutner Secretary

JUTTER

BILL NUMBER

# Division of Community Development & Planning

BRIEF TITLE

APPROVAL DEADLINE REASON

Zoning Ordinance Amendment From RA to B-3-B

DETAILS	POSITIONS	RECOMMENDATIONS
Specific Location and/or Address	Sponeor	City Plan Commission
4705 Illinois Road	Area Affected	City Wide
Reason for Project		
Relocation of Mutton Garden Supply Store		Other Areas
	Applicants/ Proponents	Applicant(s)  James Mutton City Department
		Other
Discussion (Including relationship to other Council actions	Opponents	Groups or Individuals
15 December 1987 - Public Hearing		
Minutes of hearing are attached.		Basis of Opposition
22 December 1987 - Business Meeting	Staff Recommendation	
Motion was made to Perfect the ordinance to a B-1-A and return it to the Common Council with a DO PASS recommendation.		Reason Against
Of the 7 members present 6 voted in favor of the recommendation, one did not vote.	Board or	Ву
The conditions on this rezoning have been satisifed by the applicant and are as follows:	Commission Recommendation	
1) Petitioner should provide, in recorded form acceptable to the Plan Commission attorney, a document that provides for:		See Details column for condition Perfect to B-1-A
<ul><li>a) granting a 40 foot easement to be used for a frontage road,</li><li>b) that a frontage road will be constructed to the standards and specifications</li></ul>	CITY COUNCIL ACTIONS (For Council use only)	Pass Other Pass (as Hold armended) Council Sub. Do not pas

required by the City of Fort Wayne, at the owners expense, when required by the City. c) that any and driveways form Illinois Road west will be of a temporary nature only, and are subject to review and closure, at the owners expense, including any signs or other obstruction in the 40 foot easement, when requested by the City after the construction of the frontage road.

- d) any and all obstructions to the frontage road shall be removed at the owners expense when the frontage road is constructed.
- 2) A 30 foot landscape buffer should be provided along the south property line where it abutts residential district. Said landscape buffer it to be submitted to and approved by the Community Development and Planning Landscape Architect.
- 3) Cost share in the improvement of Lawrence Drain.

Policy or Program Change	_ No	☐ Yes	
Operational Impact Assessment			

(This space for further discussion)

Project Start	Date	14 November 1986
Projected Completion or Occupancy	Date	17 July 1987
Fact Sheet Prepared by Patricia Biancaniello	Date	17 July 1987
Reviewed by Salter Number	Date	21 July 1987

Gary Cappelli, attorney for the petitioner and applicant appeared before the Commission. He stated that the applicant is James R. Mutton. He stated that the applicant holds an interest in the subject real estate by virtue of a purchase agreement conditioned upon rezoning of this parcel. He stated that the Master Plan with regard to this particular area for the City has been amended by the Commission and City Council permitting commercial development along the south side of Illinois Road from the Apple Glen shopping center area to Getz Road. He stated that they believe the applicants request is consistent with the Master Plan in this area and is indeed consistent with the development that has occurred along this area and will likely continue to occur along this area. He stated that the applicant intends, should the rezoning be granted, to relocate his business, which is Mutton's outdoor power equipment company. He stated that the business is currently located on the north side of Illinois Road approximately 1/4 of a mile from this site. He stated that this site consists of two acres of ground less a 75 foot right-of-way for Illinois Road, which reduces the size of the tract to 1.64 acres. He stated that they understand that the staff and the Commission has made a policy to provide for the reservation of frontage road easement along any parcels which are rezoned to a commercial zoning district, with that 40 foot easement, it reduces the site to approximately 1.47 acres. He stated that in addition they understand that the Commission has taken the policy of providing buffering from commercial areas with adjoining residential areas. He stated in this particular case the staff has recommended that a 30 foot buffer area be constructed along the south side of the perimeter of the property thereby reducing the effective size to significantly less than 1 1/2 acres. He stated he pointed it out in connection with their request, being a request for general commercial versus limited commercial as recommended by the staff. He stated he has read the recommendation as to the rezoning of the property. He stated that the staff has recommended that it be limited to B-1-A or limited He stated that they concur and agree with the commercial. restrictions or the requirements imposed or suggested by the staff in its recommendation, that is granting a 40 foot road easement, construction of the frontage road at the developers of owners cost, the consent to a temporary driveway that can be later removed and relocated along Illinois Road so that only direct access to Illinois Road would be along the frontage road, the removal of obstructions that are placed in that 40 foot right-of-way at the developers cost and of course the sharing of the cost of the maintenance of the Lawrence Drain. He stated where they disagree with the staff recommendation is the type of zoning - limited commercial versus general commercial. He stated that under the zoning ordinance limited commercial technically would allow a garden supply store. He stated in their opinion and he believed staff concurs with this, it would not allow the exact type of business that Mr. Mutton currently operates. He not only has a garden supply store, but does repair of lawn

mowers and other power equipment. He (Mr. Mutton) is engaged in functions, which in Mr. Cappelli's opinion, require a zoning classification of general commercial or B-3-B in this particular instance. He stated that a zoning of less than B-3-B, would deprive him of his placement of his existing business and continuation business at this site. He stated that the staff has further recommended that the B-1-A be granted and that they go to the Board of Zoning Appeals and ask for a variance to permit the specific type of business that Mr. Mutton now conducts. Mr. Cappelli stated that it was his opinion that it would not be a valid request on the part of either Mr. Mutton or on the part of the owners in the context in which it would have to be He stated for one Mr. Mutton would not own the property, therefore, how could he request a hardship. He stated secondly the owners of the property do not intend to conduct upon that property the type of business that Mr. Mutton requires. stated that the Board of Zoning Appeals could only grant a Use Variance, as contemplated under the staff's recommendations, in the case where a hardship, imposed upon the owner could be He stated therefore he did not feel it was proper procedure to do what has been suggested by the staff. He stated that he was not being critical of the staff, because they are obviously intending to restrict more intense commercial use of this particular site that would generally be allowed in the B-3-B classification. He stated therefore they have suggested to the staff that the applicant and the owner enter into a restrictive covenant permitting uses of less than all of the general commercial uses that would be permitted by the B-3-B district. He stated that he understood that it is the Commission's thoughts and the staff's thoughts that restrictive covenants lead to nothing but problems for the Commission in the administration of those covenants. He stated that he had gone to great lengths in preparing the restrictive covenant, that he felt really would alleviate the kind of burden that is normally associated with such restrictive covenants on the Commission. First of all he has suggested that these restrictions run in favor of the City of Fort Wayne and the City of Fort Wayne only, thereby alleviating the suggestion at a later date someone other than the City of Fort Wayne has standing to object to a modification or a deletion of those restrictions. Secondly, they have suggested that those restrictions could be amended by the City Plan Commission, by the terms of those restrictions, without a public hearing. He stated that runs contrary to the seeming authority granted to the Plan Commission by Indiana Code 36-7-4-613, which is a new enactment of the legislature providing the Commission with the right to impose restrictive covenants such as the ones involved here in connection with those properties, where the zoning requires the submission of development plan. He stated that this is a very technical legal argument, he stated he had provided John Wernet, legal counsel for the Commission, with a copy of the statute and he also provided each of the Commissioner's with a copy of the proposed restrictive covenant. He stated that the statute goes

on to say that the City Plan Commission has the right to impose certain kinds of restrictive covenants, which would be the kinds of restrictive covenants that they have proposed in this particular case, in connection with the approval of development plans. He stated that the statute is specifically limited to those rezonings involving development plans. He stated that in the context of the City Zoning Ordinance that would involve shopping centers and Planned Unit Developments only. He stated the reason he believed that this statute would not require the City Plan Commission to hold a public hearing on amendment or a revision or a deletion of those restrictive covenants, is that we are dealing with strictly a zoning matter, they are not dealing with a development plan matter. He stated that in connection with the development plan when the Commission imposes a restriction on the development plan that means you approve that development plan subject to that restrictive covenant and because a development plan requires a public hearing when you change the development plan you obviously are going to be required to have another public hearing on that. He stated we do not have that in He stated they have a zoning request on a B-3-B, this context. one public hearing only, if you grant it subject to restrictions, the public obviously has been benefited in the sense that no one can go back and say, "We thought that this development required these restrictions." once the zoning is requested you have granted the B-3-B, then any restrictions imposed upon that would benefit the city, would not provide the public standing to object to a subsequent amendment of those restrictive covenants. stated it is a very technical legal argument and Commission counsel is going to have to expound on that and make some kind of recommendation as to what the Plan Commission should be doing in connection with that argument. He stated that they have gone to some length to eliminate, in the restrictive covenant, the kinds of things that involve noisy, noxious, general commercial uses. He stated in that connection the applicant and the owners are agreeable in entering into these restrictive covenants to the extent the Commission grants the requested rezoning. He stated however he felt there is a good amount of background and a good amount of precedent for not even requiring a restrictive First of all the O'Daniels property was recently covenant. rezoned to a B-3-B the kind of zoning they are requesting. Furthermore, the City Plan Commission, in 1974 while the DeHaven property was in the 2-mile fringe jurisdiction of the City, granted a general commercial rezoning for that property. stated that across the road is general commercial and next to the DeHaven property is a development that in November of 1985 was granted general commercial status under the county Langland Motors. He stated that to the east next to the K-Mart Shopping is a large tract of land is county zoned general commercial. He stated that if they are trying to restrict this development of Illinois Road to limited commercial the cat is already out of the bag. He stated the county is rezoning to general commercial across the road, what is the benefit to the

public in providing limited commercial here. He stated that in deference to staff and with the policy and philosophy the Commission has in connection with other rezonings along Illinois Road, we agree to enter into these restrictive covenants. He stated that he felt they were logical restrictions on the utilization of this property. He stated it is only 1 1/2 acres and any general commercial use of the property is not going to have the massive impact that shopping centers and things of that nature would have.

There was no one present who wished to speak in favor of or in opposition to the proposed rezoning.

#### ADJOURNMENT:

# ORIGINAL

Admn. Appr.

COUNCILMANIC DISTRICT No.4 DIGEST SHEET  Zoning Map Amendment	ORIGINAL
PITLE OF ORDINANCELand Use Manage DEPARTMENT REQUESTING ORDINANCELand Use Manage SYNOPSIS OF ORDINANCE4705 Illinois Road	ment - CD&P 3-86-72-21
EFFECT OF PASSAGE Property is presently zoned RA -	- Suburban Residential.
Property will become B3B - General Busines	
EFFECT OF NON-PASSAGE Property will remain F	RA - Suburban Residential.
MONEY INVOLVED (Direct Costs, Expenditures, Sav	
(ASSIGN TO COMMITTEE (J.N.)	

BILL	NO	Z-86-12-37	120	Mondod)
DILL	140.	2-86-12-81	(as	amended)

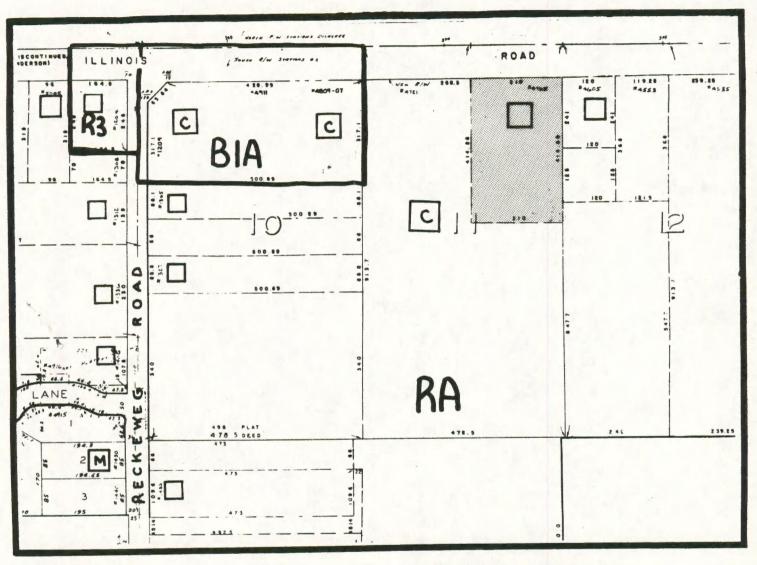
WE, YOUR COMMITTEE ON	REGULATIO	ONS			то	WHOM	WA
REFERRED AN (ORDINANC	e) ( <del>Resolution</del> )_	amending	the	City			
Wayne Zoning Map No.	F-2						
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## REZONING PETITION # 334

A PETITION TO AMEND THE ZONING MAP BY RECLASSIFYING THE DESCRIBED PROPERTY FROM AN R.A. DISTRICT TO A B.3.B DISTRICT.

MAP NO. F.2

COUNCILMANIC DISTRICT NO. 4



### ZONING:

RA RESIDENCE A

R3 RESIDENTIAL DISTRICT

BIA LIMITED BUSINESS A'

### LAND USE:

- SINGLE FAMILY
- COMMERCIAL
- M MULTI-FAMILY



DATE: 11-25.86